

From: John Thurlow
To: Microsoft ATR
Date: 1/28/02 11:46pm
Subject: Microsoft Settlement.

Dear Sirs,

I truly hope this settlement will be accepted so that this whole matter can be put behind us and we can move on. As a consumer I have often felt that some of the more extreme remedies proposed by some of the Attorney's General and Microsoft's opponents amounted to something of a sword hanging over my head a punishment for all those years ago having abandoned the Apple II in favour of a Gateway PC because I could not afford to buy into Apple's Macintosh 'monopoly'. I could see in Microsoft a company which had offered me a way forward when I was stuck on an aging architecture (the Apple II) being carved and quartered in a way that meant the products I currently use and depend on would be negatively impacted. Suffice to say that whilst I believe Microsoft is not totally blameless, I have never bought into the notion that they are a purely malevolent force and the scourge of the industry, the fact is that Microsoft was never handed a 'monopoly' it had to earn that position of dominance from scratch and the sad truth is that attaining that position had as much to do with their competitors ineptitude and greed as it did with Microsoft's innovation and savvy. I will not dwell on my differences with the monopoly ruling and all that stemmed from that and some of the crass opportunism on the part of Microsoft competitors and lawyers that continues to flow from that decision, but will focus on my two cents worth regarding this settlement.

The proposed settlement offers not only a way to bring this protracted process to a close, but also addresses the concern of choice and flexibility in the market by giving OEM manufacturers a greater choice in how they configure their PC's without the fear of retaliation from Microsoft. Further the agreement promises to bring a level of openness and transparency to Microsoft's dealing with OEM's by having a published schedule which lays down equal terms for them within defined bands based on the volume of licenses they move and not on their software bundling strategies. Indeed OEM's will have much flexibility in what they can do and will only need be mindful of whether these things are actually what consumers want instead of casting eyes warily toward Redmond. The proposed settlement offers similar flexibility to Internet Service Providers.

The proposed settlement also promises something for application developers by mandating full disclosure by Microsoft of the API's in their so called 'middleware' products whilst at the same time protecting Microsoft's intellectual property rights, after all Microsoft is going to be an important player in the competitive ecosystem, offering the only credible competition to the likes of AOL, Sony and Palm whilst the likes of these companies keep Microsoft on its toes and the only change in play should come from new players rising on their merits and not the stifling of any player through litigation. This proposed settlement also offers to consumers the real prospect of being able to chose if they wish to remove certain components from Windows which are currently mandatory, it also offers protection for Non-Microsoft 'middleware' and requires the consumers consent before any Microsoft 'middleware' can remove any Non-Microsoft icons or alter any default associations to Non-Microsoft 'middleware'.

To oversee this proposed settlement it is proposed there be Technical Committee of three persons to keep a vigilante eye and ensure the spirit and the letter of the agreement are being enforced, I think the nature of its composition should also ensure that it does not overly favour one party or another, something the appointment of a special master may run the risk of. It is also good to see that either party can have a recourse should they feel that any of the TC members is not performing as they should and that they are clear procedures defined for their replacement. The proposed settlement also makes provision for a

Microsoft Internal Compliance Officer, someone within Microsoft who would have the responsibility for overseeing Microsoft's compliance with the proposed settlement, giving the buck somewhere to stop; we also see where they would be responsible for a web site that would clearly state how third parties can issue complaints to the TC and it also lays out how the TC would deal with and process these complaints. Five years seems like adequate time for this proposed agreement to run its course but should time prove otherwise a two year extension is readily available, during which time any new remedies could be explored if necessary.

Though I support this agreement over continued litigation, I fear the later may prevail as many powerful interests now seem to have a lot vested in the course of litigation and I fear it is us consumers who will end up paying for this tiresome business through having Microsoft continually drawn away from innovation and toward the court and eventually through it having to recover the expenses off this exercise and its penalties through its products and quite possibly our wallets.

On a whole I must say that whilst I view antitrust as well intentioned I feel it is time we started to put our minds to more creative and dynamic alternatives, I myself intended to post something for discussion on my website once I purchase it and get the software to put it up. On a whole I feel the antitrust process takes far too long and lacks the dynamism of the market and runs the risk of losing its objectivity to political ambition and commercial intrigue, I think we could do much to make the market more self regulating, competitive and innovative if we could address the monopoly created by patent without robbing the inventor of the rewards that often drive his innovation. Such new thinking could address not only cases in the Computer Industry but also Pharmaceuticals and other controversial industries and also allow truly brilliant ideas and concepts to become universal and broadly applied to the benefit of the consumer and the inventor. Unfortunately that is not for this forum at this time, thank you for taking my submission, I hope my support will help put this issue to rest.

Sincerely John Thurlow.